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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,413	09/03/2003	Charles D. Morris	15047US01	5462

7590 07/18/2008  
McAndrews, Held & Malloy, Ltd.  
34th Floor  
500 W. Madison Street  
Chicago, IL 60661

EXAMINER	
JACKSON, MONIQUE R	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
07/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/654,413	<b>Applicant(s)</b> MORRIS ET AL.	
	<b>Examiner</b> Monique R. Jackson	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13,15-17,19-23,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-13,15-17,19-23,38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed 8/13/07 has been entered. Claims 37 and 40-44 have been canceled rendering the restriction requirement moot. Claims 1, 2, 4-13, 15-17, 19-23 and 38-39 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Objections***

3. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 13 recites, "foundation of claim 12 wherein said particulate layer includes, at least in part, rubber particulate" however claim 12 recites that the particulate layer is formed from unbound rubber particulate.

#### ***Claim Rejections - 35 USC § 112***

4. Claims 1, 2, 4-13, 15-17, 19-23 and 38-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 12, 31 and 38 now recite "a particulate layer" and "a second layer formed from unbound rubber particulate", hence the limitations of the additional layers or foundation elements recited with respect to "said particulate layer" render the claims indefinite for it is unclear whether the "said particulate layer" is referring to the first particulate layer or the second layer formed from particulate. Further, it is unclear how the second layer is incorporated in the layered foundation with respect to the

particulate layer, particularly since dependent claims recite a cover layer over said particulate layer and a drainage layer below said particulate layer. In addition, Claim 39 recites “said second size” however, it is unclear whether this limitation refers to the second layer formed from unbound rubber particulate of “a second size” or the protective cover layer which includes particulate having “a second size”, or both.

***Claim Rejections - 35 USC § 102***

5. Claims 1, 2, 7, 8, 10-13, 19, 21-23, 38 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Hanks (USPN 6,786,674.) Hanks teaches a cushioned surface structure, such as for a tennis court or other sport surfaces, wherein the structure comprises multiple layers of elastomeric particles, such as ground tire rubber, applied to a base surface, with one embodiment comprising at least two layers of elastomeric particles of different particle sizes, a layer that provides drainage, a color layer that covers or overlays the fill layers, a perimeter representing the tennis court layout as shown in Figure 1, and a binder or adhesive layer to hold the particles within a sectioned area (Entire Document; specifically Figures; Col. 1, lines 13-26; Col. 2, lines 3-56; Col. 3, lines 9-35; Col. 5, lines 10-49; Col. 6; Col. 8, lines 1-9; Col. 9, lines 53-60; Col. 10, line 66-Col. 11, line 3.) Hanks specifically teaches that the particles of the lower elastomeric layer is generally larger in size than the elastomeric particles of the upper elastomeric layer, and that the elastomeric particle layers may be made of loose or dry elastomeric particles that are not mixed with an adhesive binder (Col. 2, lines 49-55; Col. 3, lines 9-33; Col. 5, lines 9-49.)

***Claim Rejections - 35 USC § 103***

6. Claims 1, 2, 4-13, 15-17, 19-23 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motz et al (USPN 6,800,339) in view of Hanks, or Hord, III (USPN 5,397,620) or Thelen et al (USPN 4,564,310.) Motz et al teach a filled synthetic turf comprising a drainage layer, a barrier, two or more layers of unbound rubber particulate, such as crumb rubber, a cover layer, and artificial turf with rubber particulate dispersed therein (Figures; Col. 5-Col. 9, lines 20.) Motz et al do not teach that the rubber particulate in two of the layers have a different size, however, it is well established in the art that synthetic sports fields or turf comprising rubber particle layers can be provided with layers of different particle size, as taught by Hanks or Hord or Thelen et al, with preferably the larger particles present in a layer below smaller particles, and hence, one having ordinary skill in the art at the time of the invention would have been motivated to utilize different particle sizes, with smaller particles above the larger particles. Further, given that the rubber particle size and depth or number of layers of rubber particulate are result-effective variables affecting the impact resistance of the layer(s) and the overall synthetic sports turf, one having ordinary skill in the art at the time of the invention would have been motivated to determine the optimum number of layers and rubber particulate size in each to provide the desired impact resistance for a particular end use.

7. Claims 4-6, 9, 15-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanks. The teachings of Hanks are discussed above. Though Hanks teaches that the cushioned surface is suitable for tennis courts or other sports surfaces, with a colored cover layer as desired, and specifically teaches an improvement over grass courts, Hanks does not specifically teach incorporating a tufted or artificial grass or turf layer as a cover layer as

instantly claimed. However, given the teachings of Hanks and the state of the art at the time of the invention, one having ordinary skill in the art at the time of the invention would have been motivated to incorporate a grassy layer or artificial turf layer to provide the appearance of a grass court, wherein it is known in the art that a tufted or artificial turf layer with particulate material, such as rubber particles, dispersed within the “grass” blades provides stability to the “grass” blades and additional impact properties to the turf and hence would have been obvious to one skilled in the art.

***Response to Arguments***

8. Applicant's arguments filed 4/26/07 have been considered but are moot in view of the new ground(s) of rejection.

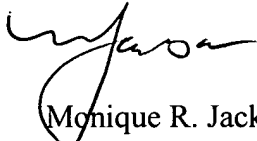
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Monique R. Jackson  
Primary Examiner  
Art Unit 1794  
November 13, 2007